IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 756 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SITARAM TULSIRAM SISODIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 756 of 2001

MR KISHOR D PANCHAL for Petitioner No. 1

MS HANSA PUNANI, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/03/2002

ORAL JUDGEMENT

1. Ld. Counsel Mr. K.D. Panchal appearing for the appellant-accused is absent when called out. On 7.2.2002, when this matter was listed for final hearing,

ld. counsel for the appellant was found absent and, therefore, this Court passed the following order:-

" When this Appeal was called out and taken up for hearing, learned counsel appearing for appellant was absent. Even on second call, he is absent.

Learned APP Ms. Punani appearing for the respondent State has taken me through relevant part of the judgment. This appeal has been listed today on Board for final hearing as Counsel for appellant has mentioned specifically that same should be listed for final hearing and should be heard peremptorily as appellant has undergone substantive part of the sentence. On one hand, counsel for the appellant prays to fix up this appeal for final hearing and on the other hand, he is found absent when called out. Because of the legal constraint and interpretation of Section 386 of CrPC, it is not legally possible for this Court to dismiss this appeal on default. So, in the interest of justice, adjourned on 14th February, 2002. On that day, this appeal shall be heard and decided on the strength of submissions of the learned APP and on merits. S.O. to 14.2.2002."

Thereafter, on 14.2.2002, the matter could not be heard and matter was adjourned to this date.

2. Today also, ld. counsel Mr. Panchal for the appellant is absent when matter is called out. Hence, this Court is inclined to deal with the matter on merits in his absence as the same cannot be dismissed for default in view of the settled legal position.

3. This appeal is preferred by the appellant-accused Sitaram Tulsiram Sisodia against the judgment dated 23.3.2001 passed by ld. Addl. Sessions Judge, Court No.13, Ahmedabad in Sessions Case No. 307 of 2000 whereby the ld. trial Judge has convicted the appellant accused for the offence punishable under Section 376 of IPC and sentenced him to suffer R/I for 7 Years with the fine of Rs. 21,000/ (Rs. Twenty One thousand only), I/d to undergo S/I for 2 Years. Ld. trial Judge also ordered that out of the amount of fine, Rs. 20,000/ (Rs. Twenty thousand only) be paid by way of compensation to the prosecutrix.

4. Ld.APP Ms. Punani has taken me through the impugned judgment and oral as well as documentary evidence led by the prosecution. To evaluate the case of the appellant, it would be proper to state the facts in

brief. According to the prosecution, complainant Keshavlal Shyamlal Soni, R/o Santoshnagar Chhapra, Kubernagar, was a close friend of appellant accused Sitaram Tulsiram Sisodia who used to visit the residence of Keshavlal. He, being close friend of the complainant, his visits were frequent. Wife of Keshavlal was not completely mentally sound or healthy and she being pregnant, was also to go to Primary Health Centre for treatment. During this period, appellant accused allured the eldest daughter-victim Rekha, of the complainant. According to the prosecution, victim girl has been raped against her will and without her free consent. Because of the sexual intercourse, victim girl became pregnant and complainant came to know about this fact only when foetus had become six months old. A complaint was lodged by the complainant before the police and after investigation and considering the totality of the facts and circumstances of the case, the police chargesheeted the accused for the offence punishable under Section 376 of IPC. Ld. Metropolitan Magistrate, Ahmedabad committed the case of the appellant accused to the court of Sessions and he came to be tried by ld. City Sessions Judge, Court No.13, Ahmedabad, on merits. To bring home the charge against the appellant accused, the prosecution has examined 10 witnesses and has led oral as well as documentary evidence. After considering the evidence led by the prosecution, the ld. Addl. Sessions Judge, Ahmedabad, vide impugned order convicted the appellant accused for the offence punishable under Section 376 of IPC and sentenced him as aforesaid.

5. The court has gone through the impugned judgment and has also considered oral as well as documentary evidence. This Court is satisfied that all legal care has been taken and there is no error apparent in appreciating the oral as well as documentary evidence led by the prosecution. Complaint exh.21 sufficiently corroborates the version of the complainant Keshavlal. Occular evidence of victim Rekha also gets corroboration from FIR and the version of her fatehr Keshavlal. It is important to note that the opinion of FSL, Medical Certificate of prosecutrix, radiological examination as to the age of prosecution do not go adverse to the case of the prosecution. It is satisfactorily established by the prosecution that mother of the victim girl is not mentally sound and was pregnant and was under treatment. The appellant accused has been offered an opportunity to explain by putting all incriminating evidence and as per settled legal proposition, explanation of the accused is relevant at the time of appreciating the case and evidence led by the prosecution. Appellant-accused, in

the statement under Section 313 of CrPC, has stated that there was one boy, a labourer working with the complainant who was also living in his house and the prosecutrix was engaged to him and probably because of the physical relationship of prosecutrix with that boy, she became pregnant and the allegation was levelled against him.The appellant accused also explained that Advocate Mr. Batunge and his brothers threatened him to part with Rs. 4000/ and when he did not agree to the same, a false and belated complaint has been lodged. He has further explained that the Advocates threatened his wife to give divorce for number of days and thereafter false complaint has been lodged. Some suggestions made to PW Rekha and Keshavlal during their cross-examination to develope defence theory, but nothing probable has come on record. On the contrary, it gives an impression of vague and false defence.

6. It is important to note and consider the difference of age between the prosecutrix and the appellant accused. Certificate Exh.34 satisfactorily establishes that the prosecutrix girl was young teen-aged girl around 18 years. Of course, this certificate is an opinion, but it substantially corroborates the case of the prosecution and the version of the complainant Keshavlal and prosecutrix Rekhaben. On the other hand, the accused was aged about 40 years. Ld. trial Judge has rightly believed the case of the prosecution that this cannot be the case of consent. Acquaintance of the accused with Keshavlal and family and close friendship of both had provided opportunity to the accused to have access in the house of Keshavlal even in his absence. If socio-economical and family background of both the parties viz. complainant Keshavlal and his family on one hand and accused Sitaram on the other hand, if looked into in proper perspective, the findings recorded by the ld. trial Judge are found not only logical, but also legal. State of mind of the mother of the victim girl is relevant otherwise intelligent mother would have noticed the pregnancy of victim Rekha at an erarly stage. Social distance between young girl and father in the Indian society should not be ignored and the ld. trial Judge has considered the same in proper perspective. So, it can be said that late filing of FIR has been properly explained by the prosecution and the same does not go to the root of the merits of the case of the prosecution. Delay can be explained by evidence oral as well as circumstantial. Finding recorded by the ld. trial Jduge in this regard is not found erroneous.

7. Ld. trial Judge has dealt with all relevant

aspects of the matter and has also considered number of decisions brought to her notice.Para-8 of the judgment reflects the correct proposition of law in light of the facts of the present case.

8. This Court is in full agreement with the conclusions reached and the reasons adopted by the ld. trial Judge for holding the appellant accused guilty for the offence punishable under Section 376 of IPC and hence the same are not required to be reiterated nor fresh reasons are required to be given for confirming the finding recorded by the ld. trial Judge. Normally in such cases, complaianant and victim gril should have been examined at an early stage of trial, but considering the order dated dated 3.1.2001 below application exh.17, it is not possible to say in any way that the same has resulted in prejudice to the accused. On the contrary, it shows the pragmatic and correct approach of the ld. trial Judge in such trial.

9. This is not the case of confirmation of finding recorded by the ld. trial Judge on different reasons or point. The explanation of the appellant accused as to his false involvement has not been rightly accepted by the ld. trial Judge. Oral as well as documentary evidence adduced by the prosecution and especially deposition of prosecutrix Rekhaben inspires confidence. On the point of quantum of awarding sentence, ld. trial Judge, after considering all relevant aspects, has rightly awarded minimum sentence as prescribed for the offence punishable under Section 376 of IPC. The ld. trial Judge, after considering the principles of Victimology, has rightly awarded compensation to the victim girl. Thus, taking an overall view of the matter, the reasons assigned and conclusion reached by the ld. trial Judge for recording finding of guilt against the appellant accused for the offence punishable under Section 376 of IPC are cogent, convincing, legal and proper and requires no interference in this appeal.

10. For the reasons aforesaid, there is no merits in this appeal and the same is hereby dismissed. The impugned judgment dated 23.3.2001 passed by ld. Addl. Sessions Judge, Court No.13, Ahmedabad in Sessions Case No. 307 of 2000, is hereby confirmed. Yadi to the concerned Court.

7.3.2002 [C.K. BUCH, J]
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